essential that there should be a well understood and thoroughly established rule, and it seems clear to us that the conclusion deliberately reached by this court on this question more than twenty years ago and uniformly adhered to ever since, should not be disturbed. . . . . We do not desire to be understood as intimating that we believe the prior decisions to have been erroneous. We simply decline to consider anew the question presented, accepting the prior decisions as finally determining it."

Is it not a curious commentary upon our legislative methods that the rule in Hunt v. Ward has not been changed by statute?

R. P.

CORPORATION LAW: STOCKHOLDER'S LIABILITY PREDICATED UPON OWNERSHIP.—The question presented in *Shean v. Cook*[1] is whether the fact that the name of a person appears on the books of a corporation as a stockholder makes him liable to creditors under our statutes.[2] As the case shows, the term "stockholder", as used in the Constitution, Article XII, section 3, must be construed in the light of the definition of stockholders contained in section 298 of the California Civil Code, which was in effect at the time said section 3 of the Constitution was adopted; "The owners of shares in a corporation which has a capital stock are called stockholders." Under the constitutional declaration of stockholders' liability carried into section 322 of the Civil Code, that liability is predicated upon ownership of the stock.[3] A reasonable interpretation of these statutes shows that "ownership" must be shown, and it follows that the stock books of a corporation are not conclusive of ownership of stock therein,[4] except in the case of banking corporations, in which they are made so by statute.[5]

The essential foundation of a creditor's right to recover in this class of action is the necessity of proving that the person sued is in fact a stockholder. Stockholders may become such either by original subscription, by direct purchase from the corporation, or by subsequent transfer from the original holders. The relation of a stockholder to a corporation is one of contract, either express or implied.[6] It exists only when a party has either expressly consented to become a stockholder, or his conduct is such that in law his consent will be implied. Nor does the entry of his name in the books as a stockholder preclude him from showing that in fact he was not such a stock-

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[1] (Feb. 28, 1919) 57 Cal. Dec. 292, 179 Pac. 185.

[2] Cal. Constitution, Art. XII, § 3; Cal. Civ. Code, §§ 298, 322, 324.

[3] Western Pac. Ry. Co. v. Godfrey (1913) 166 Cal. 346, 136 Pac. 284, Ann Cas. 1915 B, 825.

[4] Welch v. Gillelen (1905) 147 Cal. 571, 82 Pac. 248.

[5] Cal. Civ. Code, § 321.

[6] Foote v. Anderson (1903) 123 Fed. 659, 661, 61 C. C. A. 5; Carey v.

holder, and that the issuance of stock in his name was unauthorized.[7] At most, the books are only presumptive evidence that defendant became a stockholder and the presumption may be overthrown by other competent evidence.[8] An examination of the cases holding that parol evidence to contradict the stock book is inadmissible shows that the rule is limited to cases in which defendant consented to having the stock placed in his name on the books of the corporation.[9]

There must be a ratification or acquiescence in such transfers to constitute a liability. If the defendant has accepted any benefits arising from the ownership of the stock thus put in his name on the books, or if he has paid any assessments, or taken part in the stockholders' meetings, such an acquiescence is shown.[10] For example, if a legatee of corporation stock accepts the legacy he must be deemed the owner of the stock from the time of the testator's death.[11] But where, as in the present case, there was an immediate repudiation of the transaction and a refusal to accept the stock or to have anything to do with the matter, no such liability can attach,[12] since the relation is one of contract. There is no contract in such a case, for there is no assent on the part of the offeree, and the essence of a contract is consent to be bound.

Ratification implies a conscious and intended approval of the act done. It must occur with full knowledge of the facts. This being the law,[13] the question in a given case becomes one of evidence—has plaintiff established defendant's liability by sufficient testimony, or has defendant overcome plaintiff's case by evidence sufficient to establish his non-liability? The burden may be shifted to defendant to show that the act of making him a

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Williams (1897) 79 Fed. 906, 910, in which see criticism of Turnbull v. Payson (1877) 95 U. S. 418, 24 L. Ed. 437; 1 Thompson on Corporations (2d ed.) 654.

[7] Shattuck & Desmond etc. Co. v. Gillelen (1908) 154 Cal. 778, 99 Pac. 348; May v. Genesee Co. Sav. Bank (1899) 120 Mich. 330, 79 N. W. 630; Mudgett v. Horrell (1867) 33 Cal. 25.

[8] 1 Thompson on Corporations (2d ed.) 700; Chapman v. Virginian Real Estate Co. (1898) 96 Va. 177, 31 S. E. 74; 4 Thompson on Corporations (2d ed.) 1526; Keyser v. Hitz (1889) 133 U. S. 138, 33 L. Ed. 531, 10 Sup. Ct. Rep. 290; Foote v. Anderson, supra, n. 6.

[9] Baines v. Babcock (1892) 95 Cal. 581, 593, 27 Pac. 674, 29 Am. St. Rep. 158; Moore v. Boyd (1887) 74 Cal. 167, 15 Pac. 670; Hurlburt v. Arthur (1903) 140 Cal. 103, 107, 73 Pac. 734, 738, 98 Am. St. Rep. 17, 24; Abbott v. Jack (1902) 136 Cal. 510, 513, 69 Pac. 257.

[10] National Bank v. Case (1878) 99 U. S. 628, 632; Williams v. Vreeland (1917) 244 Fed. 346; McHose & Co. v. Wheeler (1863) 45 Pa. St. 32; 1 Thompson on Corporations 698.

[11] Western Pac. Ry. Co. v. Godfrey, supra, n. 3.

[12] Mudgett v. Horrell (1867) 33 Cal. 25.

[13] Williams v. Vreeland, supra, n. 10; Glenn v. Garth (1892) 133 N.Y. 18, 33; Welch v. Gillelen (1905) 147 Cal. 571, 82 Pac. 248; Clark & Marshall, Private Corporations, § 795; Stephens v. Follett (1890) 43 Fed. 842; Fowler v. Ludwig (1852) 34 Me. 455.

shareholder was in the first instance unauthorized, that it was without his knowledge or consent, and that he has not since acquiesced in or ratified it.

The test of liability, therefore, seems to be the fact of being a record shareholder, knowledge of that fact, and some act in approval or ratification.

M. H. V. G.

FIXTURES: OWNERSHIP OF AS BETWEEN VENDOR AND VENDEE IN POSSESSION: RIGHT OF RE-LOCATOR OF MINING CLAIM TO EXISTING IMPROVEMENTS.—Two recent California decisions are worthy of comment because of their bearing on what has been a rather confused subject in the law of this state. In the case of *Chowchilla Colonization Co. et al v. Thompson et al*,[1] it was held that a vendee in possession under a contract to buy land had no right to remove the buildings he had erected. There was a special provision in the contract of sale to the effect that all improvements on the land were to belong to the vendor in the event the vendee failed to fulfill his obligations, and the latter made no attempt to remove the buildings until after defaulting in several payments.

The following general rule was quoted by the court: "Articles annexed or structures erected by a vendee of land who is in possession by virtue of his contract of purchase, but who has not yet obtained title to the premises, cannot be removed by him without the consent of the vendor, the presumption being, from his interest under his contract and expectation of acquiring absolute title, that he intended the articlees or structures to become part of the land."[2] This generalization applies very well to cases in which the vendee has defaulted and lost all equitable interest in the land,[3] but if carried to its full extent leads to inequitable results. The California Supreme Court recognized this limitation, and in the case of Miller v. Waddingham[4] held that under the principle of equitable conversion a vendee not in default was equitable owner, and as such at liberty to remove fixtures so long as he did not impair the vendor's security. The Court pointed out that such a rule operates between a mortgagor and a mortgagee, the latter being entitled to enjoin waste only when he shows that his security is endangered.

Another point not always kept in mind is that the general-

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[1] (Feb. 8, 1919) 28 Cal. App. Dec. 207, 179 Pac. 411.

[2] 13 Am. & Eng. Encyc. Law (2d Ed.) 672. This general rule is widely followed. See Moore v. Vallentine (1877) 77 N. C. 188, 6 Morr. Minn Rep. 112.

[3] Cook v. Enright (1901) 134 Cal. 1, 66 Pac. 3, 2 Morr. Min. Rep. 496; Moore v. Vallentine, supra, n. 2.

[4] (1891) 91 Cal. 377, 27 Pac. 750, 13 L. R. A. 680. This opinion was given on a rehearing. See the case as originally decided, 25 Pac. 688. The court in the first hearing of the case refused to accept the equitable doctrine upon which the decision was finally rested.